

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036



Date: July 21, 1999

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE

SUBJECT: CITY OF SAN DIEGO MAJOR LCP AMENDMENT #1-98D (Revised Steep Hillside Guidelines)(For Public Hearing and Possible Commission Action at the Meeting of August 10-13, 1999)

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**SYNOPSIS**

**SUMMARY OF AMENDMENT REQUEST**

The portion of the City of San Diego LCP amendment submittal which is the subject of this report includes the Steep Hillside Guidelines. At the February 4, 1999 Commission hearing, the Commission approved the Land Development Code (LDC) as a replacement for the City's LCP Implementation Plan with several suggested modifications. The submittal also included the following support documents which will be in a document entitled the Land Development Manual: Coastal Bluffs and Beaches Guidelines; Steep Hillside Guidelines; Biology Guidelines; Landscape Standards; and, Historical Guidelines.

The Commission action on the Steep Hillside Guidelines was continued to allow City staff to revise the Steep Hillside Guidelines to conform to the Commission's action on the Land Development Code regarding encroachment into steep hillsides. The LDC proposes a maximum allowable development area which, depending on the method of application, could allow for less encroachment into steep hillsides on sites containing less than 91% steep hillsides than the current LCP would allow. Therefore, the Commission accepted the City's approach with additional limitations on more highly constrained parcels, i.e. those sites containing 91% or more steep hillsides, and with clear direction that any permitted encroachment into steep hillsides is discretionary and not permitted by right. The Commission directed City staff to revise the guidelines to more clearly identify under what circumstances discretionary encroachment into steep hillsides may be permitted. The Steep Hillside Guidelines have since been revised by City Staff, approved by the City Council and resubmitted to the Coastal Commission for certification as part of the LCP Implementation Plan.

The purpose of the Steep Hillside Guidelines is to provide standards which are intended to assist in the interpretation and implementation of the Environmentally Sensitive Lands Regulations contained in the LDC. The most significant change to the guidelines is the addition of a language specifically addressing the section of the Development Regulations for Steep Hillsides added by the Commission regarding "allowable development area" in the Coastal Overlay Zone. The language specifies that encroachment shall be avoided or minimized if unavoidable. Additionally, the revisions specify when encroachment may be permitted, circumstances when it shall not be permitted, and that it is not specifically granted, but a discretionary allowance on the part of the decision maker.

**SUMMARY OF STAFF RECOMMENDATION**

### Staff Recommendation

Pursuant to the resolutions and findings contained in this report, staff recommends that the Commission approve the Implementation Plan as submitted by the City.

The appropriate resolutions and motions begin on Page 5 . The findings for approval of the Implementation Plan begin on Page 5.

### ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment #1-98D may be obtained from Sherilyn Sarb, District Manager, at (619) 521-8036.

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## **PART I – OVERVIEW**

### **A. BACKGROUND/LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve (12) parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments; the status of those submittals is as follows:

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|----|---|--|
| 1. | North City                                  | - certified as resubmitted January 13, 1988;<br>Torrey Pines LUP Update certified on<br>February 8, 1996 |
| 2. | La Jolla/La<br>Jolla Shores                 | - certified as submitted on April<br>26, 1983  |
| 3. | Pacific Beach                               | - certified as Update resubmitted on<br>May 11, 1995   |
| 4. | Mission Beach                               | - certified as submitted on July 13, 1988  |
| 5. | Mission Bay                                 | - certified with suggested modifications<br>on November 15, 1996   |
| 6. | Ocean Beach                                 | - certified as resubmitted on<br>August 27, 1985   |
| 7. | Peninsula                                   | - certified as resubmitted on<br>August 27, 1985   |
| 8. | Centre City/<br>Pacific Highway<br>Corridor | - certified with suggested modifications<br>on January 13, 1988  |

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|-----|-----------------------------|--|
| 9.  | Barrio Logan/<br>Harbor 101 | - certified as submitted on<br>February 23, 1983 |
| 10. | Otay Mesa/Nestor            | - certified as submitted on<br>March 11, 1986    |
| 11. | Tia Juana River<br>Valley   | - certified as submitted on<br>July 13, 1988     |
| 12. | Border Highlands            | - certified as submitted on<br>July 13, 1988     |

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would involve a single unifying submittal. This was achieved in January, 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

The portion of the City of San Diego LCP amendment submittal which is the subject of this report is the Steep Hillside Guidelines. The guidelines were originally submitted to the Coastal Commission as part of LCPA #1-98-B which includes the Land Development Code and support documents. The Land Development Code (LDC) is a complete rewrite of all the City development regulations contained in the Municipal Code. The LDC and support documents would replace or amend City zoning ordinances and implementing actions which have been previously certified by the Commission as part of the certified City of San Diego Local Coastal Program (LCP). The Land Development Code was approved with suggested modifications by the Commission on February 4, 1999.

The City Council also directed the submittal of the following support documents for certification by the Commission as consistent with the Coastal Act. They are:

1. Coastal Bluffs and Beaches Guidelines;
2. Steep Hillside Guidelines;
3. Biology Guidelines;
4. Landscape Standards; and,
5. Historical Guidelines.

The City intends to include the above guidelines in a document entitled the Land Development Manual. All of the above guidelines except the Steep Hillside Guidelines were approved with suggested modifications by the Commission on February 4, 1999. The Commission continued action on the Steep Hillside Guidelines with direction to the City to revise the guidelines to conform to the Commission's action on the Land Development Code. The guidelines have been revised by City staff, approved by City Council and resubmitted to the Coastal Commission for approval as part of LCPA #1-98.

## **B. GEOGRAPHIC DESCRIPTION OF CITY'S COASTAL ZONE JURISDICTION**

The City of San Diego represents one of the largest metropolitan centers in the State of California and includes one of the larger coastal zone areas in the State in terms of geography and population. The City's coastal zone stretches from the City of Del Mar, the recently incorporated City of Solana Beach, and the

unincorporated County areas in the north to the international border with Mexico on the south. The demographics are such that the northernmost and southernmost communities within the City's coastal zone are relatively undeveloped while the portions of the City near San Diego Bay and Mission Bay are highly urbanized.

In terms of coastal zone resources, the City is indeed fortunate; of these resources, the most significant ones are:

- the intensely used sandy beach areas in Ocean Beach, Mission Beach, Pacific Beach and La Jolla;
- the wetland areas of statewide and national importance including: portions of San Dieguito Lagoon, Los Penasquitos Lagoon, Mission Bay and the Tia Juana Estuarine Sanctuary;
- the major inland canyon systems in the North City communities, with their environmentally sensitive habitats and scenic qualities; and,
- the major visitor-serving destination areas within and surrounding Mission Bay and the La Jolla community itself.

However, it is these very resources, along with related public access opportunities and constraints, which make the balancing of the demands to develop in the coastal zone versus demands to preserve its resources so difficult. The competing demands are most evident in the Mission Bay, La Jolla and North City areas. It is in these areas where the Commission has reviewed major residential subdivisions, industrial parks and commercial developments that pose the greatest impact to the above identified resources.

### **C. STANDARDS FOR COMMISSION REVIEW**

The standard for Commission review of the Implementation Plan is found in Section 30513 of the Coastal Act. It states:

#### **Section 30513**

The local government shall submit to the commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions, which are required pursuant to this chapter.

If within 60 days after receipt of the zoning ordinances, zoning district maps, and other implementing actions, the commission, after public hearing, has not rejected the zoning ordinances, zoning district maps, or other implementing actions, they shall be deemed approved. The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.

The implementation program must therefore be consistent with and adequately detailed and structured to carry out the provisions of the certified land use plan segment

#### **D. PUBLIC PARTICIPATION**

The City has held numerous community planning group meetings, workshops, Planning Commission hearings and City Council meetings with regard to the City's Land Development Code preparation. The revisions to the Steep Hillside Guidelines are the result of an effort that involved a diverse group of involved citizens and organizations (Steep Hillside Working Group and Citizen's Advisory Committee) and Coastal Commission staff. The consensus among the participants was that the revisions to the Guidelines fully implement the direction provided by the Coastal Commission. The San Diego City Council unanimously approved the revised Steep Hillside Guidelines on June 1, 1999. No public comment was offered at the hearing.

#### **PART II. RECOMMENDED RESOLUTIONS AND MOTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- A. RESOLUTION I** (Resolution to approve certification of the City of San Diego LCP Implementation Plan Amendment 1-98D, as submitted)

##### **MOTION I**

I move that the Commission reject the City of San Diego Implementation Plan Amendment 1-98D, as submitted.

##### **Staff Recommendation**

Staff recommends a **NO** vote and adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

##### **Resolution I**

The Commission hereby approves certification of the amendment to the City of San Diego Local Coastal Program on the grounds that, the amendment conforms with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

#### **PART III. FINDINGS FOR APPROVAL OF CITY OF SAN DIEGO LCPA #1-98D, AS SUBMITTED**

##### **A. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that the LCP Implementation Plan amendment, as set forth in the resolution for certification as submitted, is consistent with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

## **B. CONFORMANCE WITH THE CERTIFIED LAND USE PLANS**

### **1. BACKGROUND/COMMISSION ACTION ON LAND DEVELOPMENT CODE**

The purpose of the Steep Hillside Guidelines is to provide standards which are intended to assist in the interpretation and implementation of the Environmentally Sensitive Lands Regulations (ESL) contained in the Land Development Code (LDC). The City has proposed the ESL as part of Chapter 14, Article 3 which includes "Supplemental Development Regulations". The purpose of the regulations is to protect, preserve and, where damaged, restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. The City has revised its Municipal Code with the intent of developing Citywide regulations which are applicable to development in or adjacent to environmentally sensitive habitat areas such that development proceeds in conformance with the City's Multiple Species Conservation Program Subarea Plan.

The ESL is also the section of the LDC that addresses the coastal resources protected pursuant to the California Coastal Act. The revised guidelines clarify that "every proposed development that encroaches into steep hillsides will be subject to the Environmentally Sensitive Lands Regulations and will be evaluated for conformance with the Steep Hillside Guidelines as part of the review process for the required Neighborhood Development Permit, Site Development Permit or Coastal Development Permit".

The ESL regulations apply to all proposed development when environmentally sensitive lands are present on the premises. Environmentally sensitive lands is a defined term for purposes of these regulations and means lands containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs and 100-year floodplains. The definition of steep hillsides is as follows:

*Steep hillsides* means all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet;

The Steep Hillside Guidelines have been developed to interpret Section 143.0142 of the ESL - Development Regulations for Steep Hillsides. A strike-out/underline version of Section 143.0142 is attached as Exhibit A to indicate the modifications which have been

suggested by the Commission and which the revised guidelines are intended to implement.

As submitted by the City, the ESL regulations establish a 25% allowable development area. Inside the Multi-Species Habitat Preserve Area (MHPA), the 25% allowable development area is determined in accordance with the OR-1-2 zone which requires that development occur on the portion of the premises not within the MHPA; however, if the portion of the premises not within the MHPA is less than 25% of the premise area, encroachment into the MHPA may be permitted to achieve a maximum development area of 25%.

Outside the MHPA, the allowable development area includes all portions of the premises without steep hillsides, which shall be preserved in their natural state, except that development is permitted on steep hillsides if necessary to achieve a maximum development area of 25% of the premises. Outside the MHPA, up to an additional 15% development area is permitted for major public facilities, such as parks, fire and police stations, libraries, schools, major streets and prime arterials, and public utility systems. The 15% additional encroachment is also permitted "for projects where the existing development is not contiguous, and access to the entirety of the development area is not otherwise available", and "for projects where the existing development does not have direct access to a public right-of-way. Beyond the 40% allowable development area, alternative compliance is offered for developments that do not comply with the above mentioned allowable development area and do not result in conflicts with other regulations. Further, deviations from the Environmentally Sensitive Lands regulations can be approved if certain findings are made.

Additionally, the regulations as proposed by the City specifically exempt any subdivision or development of lots containing less than 15,000 sq.ft. from the requirements of Section 143.0142 (a) which sets forth the allowable developable area of a property. Since these regulations are not applicable to a development proposed on lots containing less than 15,000 sq.ft., there would be no mechanism contained within the LCP, as proposed by the City, to apply encroachment limitations through the Coastal Development Permit process consistent with the policies of the certified land use plans. Many certified LUPs contain encroachment limitations and provide for protection of steep hillsides for reasons including habitat protection, visual impact and hazards associated with geologic instability and erosion control. The steep hillside protection afforded in the certified LUPs is not based on the size of the parcel.

The Commission found that the ESL as submitted does not apply to all development requiring a Coastal Development Permit, or apply to all the resource areas afforded protection by the specific policies of the certified LUPs. Therefore, in review of the ESL, the Commission found modifications were necessary in order to carry out the certified LUPs and afford an equal or higher level of protection to steep hillsides when compared to the current LCP. Some of those modifications were to Section 143.0142 and the Open Space Zones. The exemption for less than 15,000 sq.ft. lots was also eliminated.

Regarding steep hillsides, the Commission found that modifications are required to insure that sensitive steep hillsides, i.e., those with habitat value, scenic qualities, or potential geologic hazards, are protected to the extent necessary to carry out the certified LUPs. The proposed ordinance update establishes a new method for addressing development proposals on sensitive hillsides when compared to the certified Hillside Review (HR) overlay zone. In the HP overlay, the significant slopes greater than 25% that are sensitive either for habitat value, scenic amenities or potential geologic hazard were mapped on Map C-720, and those hillsides are protected by

policies that limit encroachment through a “sliding scale” of discretionary permitted encroachment, depending on the amount of the site containing steep hillsides. Staff had recommended that the previously-certified “sliding-scale” be incorporated into Section 143.0142 the Development Regulations for Steep Hillsides as the applicable standard within the Coastal Overlay Zone. For lots with 75% or less steep hillsides, a maximum 10 percent encroachment would be permitted, and the percentage of encroachment allowed increases with an increase in the amount of steep hillsides on the site, to a maximum 20% encroachment if all or nearly all of the site contains steep hillsides. This encroachment limitation has been considered by the Commission to be a discretionary allowance and not permitted by right.

The proposed ordinance update eliminates the “sliding scale” approach and instead provides for a 25% maximum allowable development area afforded to all premises, and encroachment is permitted within steep hillsides, if necessary to achieve a maximum allowable development area. When comparing the previously-certified “sliding scale” with the City’s 25% maximum allowable development area, it appears there could be more encroachment permitted by the “sliding scale” for lots with less than 90% steep hillsides. However, that is only true if the encroachment limitation is considered a matter of right, rather than a discretionary encroachment that is allowed only for unusual situations and when it is unavoidable.

Therefore, the Commission found when encroachment into steep hillsides is unavoidable, the allowance of any encroachment is a discretionary action. If a limit for coastal hillside encroachment is set by the use of the “up-to” 25% maximum allowable development area, as in the proposed LDC, this standard is more restrictive than the present “sliding scale” encroachment limit contained in the current certified LCP. This is not true if the encroachment allowance is not applied in a discretionary manner, or for lots with more that 91% of the area in steep hillsides.

For lots with 91% or more of the area in steep hillsides, the Commission found a 20% maximum development area conforms with the certified land use plan policies. However, for such highly constrained properties it was suggested that specific criteria may be developed by the City to determine when an additional 5% encroachment may be permitted to allow an economically viable use. The Commission acknowledged that the City may develop an alternative set of criteria for that additional 5% encroachment that is different from the deviation process that is established by the suggested modifications to Section 126.0708. The deviation process established in that suggested modification is to be used primarily when an applicant contends strict application of the regulations would constitute a taking of property without just compensation. However, should the City decide any encroachment beyond the 20% maximum developable area for the highly-constrained properties should only be permitted through the deviation process, that could also be consistent with the Commission’s intent.

Therefore, the Commission found that the revisions to the Steep Hillside Guidelines should include the criteria for determining when encroachment into sensitive hillsides is unavoidable. Section 143.0142 (a)(4) of the ESL (Exhibit A of this staff report) was added by the Commission to address implementation of the allowable development area on premises within the Coastal Overlay Zone. The suggested modifications to the ESL provide that encroachment into steep hillsides is to be avoided to the maximum extent possible, and if unavoidable encroachment is necessary, it shall be minimized. The criteria contained within the guidelines must be sufficiently specific and objective to assure the code language is interpreted and implemented consistently by the City in review of coastal development. The suggested modifications to the LDC are intended to insure that encroachment is not permitted solely for the purpose of obtaining the maximum allowable development area but rather only when encroachment is unavoidable, such as when necessary to access the less sensitive, flatter portions of the site

As is the case currently within the certified City code, an additional 15% encroachment allowance can be authorized for public related-improvements, such as major roads and public utilities. This additional 15% encroachment is also allowed within the North City LCP land use plan areas only for local public streets or private roads and driveways which are necessary for access to the more



developable portions of the site containing non-steep hillsides, provided no less environmentally-damaging alternative exists.

Further, the current certified Hillside Review (HR) Overlay Zone protects those areas mapped as sensitive, viewshed or geologic hazard on the certified Map C-720. The Map C-720 was the result of a rigorous mapping effort to represent a clear definition of steep hillsides containing environmentally sensitive habitats, significant scenic amenities or potential hazards to development. The Commission's modifications to the LDC continue to refer to map C-720 to identify sensitive areas worthy of protection by the ESL. There are several reasons why it is appropriate to continue to utilize the currently certified HR maps (or similar criteria to develop new maps), to identify areas where the additional encroachment limitations should apply, within the Coastal Overlay Zone, in order to adequately carry out the land use plans. They are: 1) The currently certified HR ordinance affords protection to hillside areas visible from I-5 and/or major inland canyon systems, regardless of habitat value; 2) There is a third criteria for protection that relates to the geologic stability of the area, regardless of visibility or habitat; 3) Examples of areas mapped as visible but not possessing sensitive vegetation include hillsides on the north and south sides of Los Penasquitos Canyon, Lopez Canyon and Carmel Valley, and hillsides visible from the freeway at Genesee and Interstate 5 and in the Sorrento Valley area. Some of these hillsides also have areas of geologic instability.

In summary, the Commission finds the certified land use plan policies establish encroachment limits on steep, naturally-vegetated hillsides through a "sliding scale" approach applicable within the Coastal Overlay Zone. The Commission has considered these encroachment limits to be discretionary, not permitted by right; and that development of the steep hillsides containing sensitive biological resources or mapped as viewshed or geologic hazard on Map C-720 should be avoided to the maximum extent possible. With the proposed suggested modifications, the steep hillside regulations are adequate to carry out the provision of the certified land use plans and Chapter 3 policies of the Coastal Act. The corresponding changes must also be made to the Open Space Zones Section 131.0250 and the Steep Hillside Guidelines.

Through adoption of the Commission's suggested modifications, Section 131.0250(a) and (b), which address allowable development area in open space zones will clarify that within the Coastal Overlay Zone, coastal development on premises with steep hillsides containing sensitive biological resources, or mapped as Viewshed or Geologic Hazard on Map C-720, is subject to the encroachment limitations set forth in Section 143.0142 (a) .

## **2. REVISED STEEP HILLSIDE GUIDELINES.**

The revised Steep Hillside Guidelines contain the following additional language to clarify the Commission's intent in its approval of the Land Development Code with suggested modifications. Regarding subdivisions, the guidelines state that, "within the Coastal Overlay Zone, no coastal development permit shall be issued for a subdivision that results in a newly created lot that does not contain adequate development area such that no encroachment into steep hillsides is required to accommodate future development. Encroachment is defined as alteration of the natural landform by grading or where the area is rendered incapable of supporting vegetation due to the displacement required for building, accessory structures, paving or clearance of vegetation, including Zone 1 brush management (30 ft. minimum setback)". This means that a new lot should not be created if it cannot provide a building pad and a 30 foot setback without encroaching into steep hillsides. Additionally, Zone 1 brush management must be included as encroachment in all cases, when determining allowable development area.

The guidelines also specify that erosion control measures are subject to the encroachment limitations specified in Section 143.0142 (a)(4). Therefore, if approved development requires grading or erosion control measures, such as crib or retaining walls, to support the building pad or access road, those measures must be included within the allowable development area.

The most significant revisions to the Steep Hillside Guidelines relate to interpretation of the allowable development area. The guidelines as proposed by the City include various examples of ways to determine the portions of the site that should be considered existing development area and when the development area may be expanded to include isolated pockets of non-steep area. The intent is clearly to concentrate development on the least sensitive and less steep portions of the site; however, if encroachment into steep hillsides is necessary to accommodate a 25% development area, it would be permitted. Where the existing guidelines include interpretation of the allowable development area which is inconsistent with the Commission's intent, i.e. to avoid encroachment into steep hillsides when possible, language has been added to either clarify the interpretation is applicable outside the Coastal Overlay Zone only, or to clarify that Section 143.0142 (a)(4) applies in the Coastal Overlay Zone.

The City has added two additional sections to interpret Section 143.0142(a)(4) which includes the regulatory language for allowable development area within the Coastal Overlay Zone. The revised sections are on pages 9 and 10 of the strike-out/underline version of the Steep Hillside Guidelines attached to this staff report. The revisions clarify that projects shall be evaluated on a case-by-case basis to determine if encroachment can be permitted. Also, the intent is that development is located on the least sensitive portions of the site and that encroachment into areas containing steep hillsides, sensitive biological resources, geologic hazards, view corridors identified in certified land use plans and viewsheds shown on Map C-720 be avoided, or minimized if unavoidable.

The revised guidelines specify that encroachment shall not be permitted for accessory uses, or for primary structures when the encroachment is designed to accommodate accessory uses elsewhere on the site. Also, encroachment is not permitted when the sole purpose is to achieve the maximum allowable development area. In other words, if a single family residence can be accommodated on the site without encroachment into steep hillsides, then encroachment shall not be permitted. If the applicant believes such a restriction denies all economically viable use of the premises, a deviation from the ESL should be required pursuant to Section 126.0708(e) of the Land Development Code (attached as Exhibit B). The revised guidelines also reiterate that encroachment into steep hillsides is not specifically granted, but is a discretionary action on the part of the decision maker.

The revised guidelines address the language the Commission approved to replace the currently-certified "sliding-scale" for encroachment, i.e. language that specifies for lots less than 91% constrained by steep hillsides, the maximum allowable development area that may be considered through discretionary review is 25%. For premises that are 91% or more constrained by steep hillsides, the maximum allowable development area that may be considered through discretionary review is 20%. However, the Commission allowed for the City to develop a set of criteria that would allow for an additional 5% of development area if it is found that 20% would not allow for an economically viable use. The City could have developed such criteria which would be different from the deviation process. However, the City has chosen to not include such separate criteria but to require a deviation for any development proposed beyond the 20% development area, if the applicant believes such a restriction denies all economically viable use of the premises.

The currently certified land use plan policies addressing steep hillside development include allowance for additional encroachment when necessary for major public roads and collector streets identified in the Circulation Element of an adopted community plan; or for local public streets and driveways which are necessary for access to the more developable portions of the site on slopes of less than 25% grade, provided no less environmentally-damaging alternative exists. An exception is also identified for public utility systems. In its action on the LDC, the Commission included a 15% maximum allowance for such additional encroachment, similar to the City's language in the ESL applicable to development outside the Coastal Overlay Zone. The revised guidelines include language addressing such potential additional encroachment clarifying that the additional encroachment allowance must first be included within the allowable development area, if the existing development area is less than the maximum. In other words,

the 15% allowable development area is not added to the 25% maximum if access, etc. can be accommodated within the 25% maximum allowable development area. The deviation process would address those situations where the existing development area is more than 40% and has no access, or if the additional 15% is not necessary to obtain access.

The Steep Hillside Guidelines also include specific Design Standards for development proposals on sites containing steep hillsides. The standards are designed to assure development minimizes the alteration of natural landforms to the extent possible, and respects existing drainage patterns and geologic hazard areas. Language has been added to clarify that all projects shall be designed and sited to avoid potentially significant geologic hazards, and, where such hazards are identified, re-siting alternatives should be evaluated to reduce risk.

The City also added language to clarify that within the Coastal Overlay Zone, the determination of the least sensitive portions of steep hillsides shall include a constraints analysis of view corridors identified in adopted land use plans, viewsheds as identified on Map C-720, potential geologic hazards and biological resources. Regarding biological resources, the guidelines include a prioritization of sensitivity in order to help determine the least biologically sensitive portions of the site.

The Steep Hillside Guidelines also contain Community-Specific Requirements which incorporate requirements of the adopted Community Plans. In addition, the Development Regulations for Steep Hillsides contain language which specifically clarify that "all development on steep hillsides located in La Jolla or La Jolla Shores Community Plan areas, shall, in addition to meeting all other requirements of this section, be found consistent with the Hillside Development Guidelines set forth in the La Jolla - La Jolla Shores Local Coastal Program Land Use Plan.

Finally, there is a section entitled "Findings, Deviations and Alternative Compliance". The City has added language to this section which clarifies that if a deviation from any of the ESL is requested, additional findings (found in Section 126.0708(e)) must be made in addition to the findings for a Coastal Development Permit, Neighborhood Development Permit, Site Development Permit and the additional findings for ESL. The guidelines specify that Alternative Compliance is not applicable within the Coastal Overlay Zone.

Regarding the deviation process, the guidelines clarify that deviations from the steep hillside regulations may be considered when application of the regulations would result in denial of all economically viable use of the premises. A deviation application must be accompanied by all of the information required in the Submittal Requirements for Deviations from the Environmentally Sensitive Lands Regulations Within the Coastal Overlay Zone located in the Land Development Manual and attached as Exhibit B. This information is to be used by the decision maker to determine whether or not a deviation should be granted.

The guidelines clarify that the deviation process within the Coastal Overlay Zone is not intended to be utilized to achieve the maximum allowable development area as permitted by the ESL. Rather it is intended to provide relief when development in accordance with the ESL would result in no economically viable use of the premises. In other words, if a single family residence can be accommodated on a site without encroachment into steep hillsides, but the applicant desires a larger home which requires encroachment into steep hillsides, the deviation process should be required even if the maximum allowable development area has not been exceeded, because the encroachment into steep hillsides is avoidable. Such an interpretation assures consistency with the ESL as approved with suggested modifications by the Commission.

### **3. LAND USE PLAN POLICIES**

Several land use plan segments of the City of San Diego Local Coastal Program contain specific policies related to steep hillside development. The following cited LUP policies are included within the certified Local Coastal Program in response to Sections 30240, 30241, 30251 and

30253 of the Coastal Act which require that new development shall preserve the scenic and visual quality of coastal areas, be sited and designed to protect environmentally sensitive habitat areas and minimize risk in areas of flood, fire or geologic hazard. Environmentally sensitive habitat areas must be protected from any significant disruption of habitat values through the LUP policies and implementing ordinances contained within the certified Local Coastal Program which are applicable to development proposed within the coastal zone.

**Torrey Pines LUP Segment:**

Within the Coastal Zone, landforms that consist of slopes of 25 percent grade and over that have not been identified as possessing environmentally sensitive habitats, significant scenic amenities or hazards to developments, may be developed provided the applicant can demonstrate all of the following:

1. To protect the scenic and visual qualities of the site as seen from public vantage points, recreational areas, and roads or highways, the proposed development shall minimize the alteration of natural landforms and create only new slopes that are topographically compatible with natural landforms or the surrounding area.
2. The proposed development restores and enhances any previously manufactured slopes on the site to make them compatible with surrounding natural landforms and native vegetation.
3. The proposed development, including any fill or grading, does not create any significant new soil erosion, silting of lower slopes, slide damage or other geologic instability, flooding, or permanent scarring.
4. The proposed development contains a native vegetation restoration and enhancement program for those portions of the site in 25 percent or greater slopes that will provide as follows:
  - a. For every area or quantity of native vegetation located on slopes of 25 percent grade or over, in excess of the encroachment allowance provided in Table 1 below, that is disturbed by the development, an area equal to 120 percent of the disturbed area shall be restored in native vegetation. The restoration and enhancement program shall be performed prior to or concurrently with the development and may be incorporated into the design and implementation of the overall landscaping program for the site.
  - b. The native vegetation restoration and enhancement program required by subsection (a) shall be located on the site of the permitted development. However, if the size, topography or biological characteristics of the site are determined by the Planning Director to be unsuitable for said restoration or enhancement program, then the native vegetation shall be provided at one or more off-site locations within the Coastal Zone, which may include publicly owned rights of way. If such location within the Coastal Zone are infeasible, then such native vegetation restoration or enhancement program shall be provided at other suitable locations within the City of San Diego outside the Coastal Zone.

All native vegetation restoration and enhancement programs shall be prepared by a biologist, registered landscape architect, or other qualified professional in close consultation with the Department of Fish and Game and U.S. Fish and Wildlife Service.

In the case of those landforms which consist of slopes of 25 percent and over which have been identified as possessing environmentally sensitive habitats or significant scenic amenities or hazards to development (including major undeveloped sites with high erodibility characteristics), the following policy shall apply:

1. Slopes of 25 percent grade and over shall be preserved in their natural state, provided a minimal encroachment into the steep slope areas over 25 percent may be permitted as set forth in the following table:

TABLE 1  
25 Percent Slope Encroachment Allowance

Percent of parcel in Slopes of 25 percent and over	Maximum encroachment allowance as percentage of area in slopes of 25 percent and over
75% or less	10%
80%	12%
85%	14%
90%	16%
95%	18%
100%	20%

For the purposes of this ordinance, encroachment shall be defined as any area of twenty-five percent (25%) or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to displacement required for the building, accessory structures or paving, or is cleared of vegetation, other than allowed below:

The following uses shall be exempt from the encroachment limitations set forth above:

- a. Major public roads and collector streets identified in the Circulation Element of an adopted community plan or the City of San Diego Progress Guide and General Plan.
  - b. Local public streets or private driveways which are necessary for access to the more developable portions of a site on slopes of less than 25 percent grade, provided no less environmentally damaging alternative exists. The determination of whether or not a proposed road or driveway qualifies for an exemption, in whole or part, shall be made by the Planning Director based upon an analysis of the project site.
  - c. Public utility systems.
2. On existing legal parcels, a deviation in the encroachment allowance percentage may be granted by the Planning Director, if necessary to maintain a minimum development right (total disturbed area) equal to 20 percent of the entire parcel.
  3. All encroachment allowances, including permissible deviations, shall be subject to a determination by the Planning Director that such encroachment supports the findings of fact set forth in the City's' Hillside Review Zone.

#### **Mira Mesa LUP Segment**

This LUP segment contains almost identical language as cited above relative to development of sensitive and non-sensitive steep hillsides.

#### **La Jolla LUP Segment**

This LUP segment contains very similar language as cited above for protection of steep hillside areas.

#### **Tijuana River Valley LUP Segment** (as amended)

This segment will contain similar provisions to those cited above.

In response to the above cited provisions within the certified LUPs, the City has established the (HR) Overlay Zone Program for the coastal zone in the current certified Local Coastal Program, which is being proposed for replacement by the submitted LDC. The purpose of the HR zone was to provide supplementary regulations to assure that permitted development protects natural topographic features and character, aesthetic qualities, and environmental resources from direct or indirect impacts. Both the certified La Jolla and North City LUPs contain policy language which require new development to preserve steep sloping hillsides in excess of 25% gradient in their natural condition. Historically, only minor encroachments were permitted where an existing parcel was entirely (or almost completely) in steep slopes. In review of the City's LCP, the Commission has been adamant about protecting both the resource and scenic values found on the steep slopes which would be destroyed, if disturbed, and about protecting downstream wetland areas which could be adversely impacted from erosion resulting from grading on steep hillsides.

In its review of the LDC, the Commission found that, as proposed, the regulations for steep hillsides would cumulatively allow a greater amount of encroachment onto naturally vegetated hillsides than was intended by the above mentioned LUP policies. As proposed, the LUP policy language which has historically been applied to the slopes mapped as sensitive in the current certified LCP would not be implemented. Therefore, the Commission found revisions must be made to the steep hillside regulations as they are applied within the Coastal Overlay Zone in order to be adequate to carry out the land use plans. The proposed Steep Hillside Guidelines have been revised to be consistent with the Commission's suggested modifications to the Land Development Code. Therefore, the Commission finds the Steep Hillside Guidelines are adequate to carry out the certified land use plans.

#### **PART V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the Steep Hillside Guidelines would not result in significant environmental impacts under the meaning of the California Environmental Quality Act. The Commission finds the proposed local coastal program amendment will not result in significant environmental impacts under the meaning of the California Environmental Quality Act. Furthermore, future individual projects would require coastal development permits from the City of San Diego. Throughout the City's Coastal Zone, the specific impacts associated with individual development projects would be assessed through the environmental review process; and, the individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for such impacts which have not been explored and the LCP Amendment can be supported.

## **79. Section 143.0142 Development Regulations for Steep Hillside**

*Development* that proposes *encroachment* into *steep hillsides* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Steep Hillside Guidelines in the Land Development Manual.

### **(a) Allowable Development Area**

- (1) Inside of the *MHPA*, the allowable development area is determined in accordance with the regulations set forth in the OR-1-2 zone, pursuant to Section 131.0250(b). However, within the Coastal Overlay Zone, development is permitted only if in conformance with Section 143.0142 (a)(4) and the certified local coastal program.
- (2) Outside of the *MHPA*, the allowable development area includes all portions of the *premises* without *steep hillsides*. *Steep hillsides* shall be preserved in their natural state, except that *development* is permitted in *steep hillsides* if necessary to achieve a maximum development area of 25 percent of the *premises*. However, within the Coastal Overlay Zone, coastal development on steep hillsides shall be minimized to the maximum extent possible and permitted only when in conformance with Section 143.0142 (a)(4).
- (3) Outside of the *MHPA* and outside the Coastal Overlay Zone, up to an additional 15 percent development area is permitted only as follows and as long as the total development area does not exceed 40 percent of the *premises*, pursuant to the Steep Hillside Guidelines in the Land Development Manual:
  - (A) For projects where the following major public facilities are required: publicly owned parks and recreation facilities, fire and police stations, publicly owned libraries, public *schools*, major *streets* and primary arterials, and *public utility* systems;
  - (B) For projects where the existing development area is not contiguous, and access to the entirety of the development area is not otherwise available; and
  - (C) For projects where the existing development area does not have direct access to a *public right-of-way*.
- (4) Within the Coastal Overlay Zone, steep hillsides shall be preserved in their natural state and coastal development on steep hillsides containing sensitive biological resources, or mapped as Viewshed or Geologic Hazard on Map C-720 shall avoid encroachment into those areas to the maximum extent possible.
  - (A) When encroachment onto such steep hillsides is unavoidable, encroachment shall be minimized; except that encroachment is permitted in such steep hillsides to provide for a development area of up to a maximum of 25% of the premises, on premises containing less than 91% of such steep hillsides. On premises containing 91% or greater of such steep hillsides, the maximum allowable development area is 20% of the premises; however, an additional 5% encroachment into such steep hillsides may be permitted if necessary to allow an economically viable use, pursuant to the Steep Hillside Guidelines.
  - (B) For purposes of this section, the development area shall include Zone 1 Brush management pursuant to the Landscape Regulations in Chapter 14, Article 2, Division 4.

(C) Up to an additional 15% of encroachment onto steep hillsides is permitted for the following:

- (1) Major public roads and collector streets identified in the Circulation Element of an adopted community plan or Land Use Plan;
- (2) Public utility systems;
- (3) In the North City Local Coastal Program Land Use Plan areas only:

Local public streets or private roads and driveways which are necessary for access to the more developable portions of a site containing slopes of less than twenty-five percent (25%) grade, provided no less environmentally damaging alternative exists. The determination of whether or not a proposed road or driveway qualifies for an exemption, in whole or in part, shall be made by the City Manager based upon an analysis of the project site;

(D) For the purposes of this section, encroachment shall be defined as any area of twenty-five percent (25%) or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to the displacement required for the building, accessory structures, or paving, or is cleared of vegetation (including Zone 1 brush management.

(E) In approval of any Coastal Development Permit for the subdivision of land pursuant to the Subdivision Map Act, and any other division of land, including lot splits, no encroachment into steep hillsides containing sensitive biological resources, or mapped as Viewshed or Geologic Hazard on Map C-720 shall be permitted, and the decision maker shall require a minimum 30 foot setback for Zone 1 brush management for coastal development from such steep hillsides.

- (b) All *development* occurring in *steep hillsides* shall comply with the design standards identified in the Steep Hillside Guidelines in the Land Development Manual for the type of *development* proposed.
- (c) Newly created slopes shall not exceed the slope gradient permitted in Section 142.0133.
- (d) Disturbed portions of the site in 25 percent (4 horizontal feet to 1 vertical foot) or greater slopes shall be revegetated or restored in accordance with Chapter 14, Article 2, Division 4 (Landscape Regulations).
- (e) Before approval of any Neighborhood Development Permit or Site Development Permit, the *applicant* shall execute and record in favor of the City a hold harmless and/or indemnification agreement for the approved *development*, as necessary and appropriate.
- (f) Any increase in runoff resulting from the *development* of the site shall be directed away from any *steep hillside* areas and either into an existing or newly improved public storm drain system or onto a *street* developed with a gutter system or *public right-of-way* designated to carry surface drainage run-off.
- (g) Erosion Control Measures



- (1) Outside the Coastal Overlay Zone, Erosion control measures are not subject to the 25 percent development area regulations in Section 143.0142(a), but are subject to the landscape regulations in Chapter 14, Article 2, Division 4 and the Steep Hillside Guidelines in the Land Development Manual. Within the Coastal Overlay Zone, erosion control measures are subject to Section 142.0142(a)(4).
- (2) Air-placed concrete, including gunite or shotcrete, *retaining walls*, *buttress fills*, and other similar erosion control measures may be allowed only if determined to be the only feasible means of erosion control to protect the existing ~~principal~~primary structures or *public improvements*.
  - (A) These measures shall be designed and implemented in accordance with generally accepted engineering standards and specifications and shall also incorporate existing adjacent landform characteristics including color coating, texturing, landscape, and topographical features.
  - (B) Where erosion control measures are proposed to encroach upon or affect any portion of property owned by the City of San Diego, the permittee shall provide written permission from the City Manager before approval of the Site Development Permit. Documentation of this approval shall be recorded with the conditions of permit approval.

(h) All development on steep hillsides located in La Jolla or La Jolla Shores Community Plan areas, shall, in addition to meeting all other requirements of this section, be found consistent with the Hillside Development Guidelines set forth in the La Jolla - La Jolla Shores Local Coastal Program Land Use Plan.

## **DEVIATIONS FROM ENVIRONMENTALLY SENSITIVE LANDS REGULATIONS**

### **REQUIRED FINDINGS**

#### **21. Section 126.0708 (e) shall be added as follows:**

##### **(e). Supplemental Findings Environmentally Sensitive Lands Within the Coastal Overlay Zone**

When a deviation is requested from the environmentally sensitive lands regulations because the applicant contends that application of the regulations would result in denial of all economically viable use, the coastal development permit shall include a determination of economically viable use.

A Coastal Development Permit, or a Site Development Permit in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to environmentally sensitive lands where a deviation is requested in accordance with Section 143.0150 may be approved, or conditionally approved, only if the decision-maker makes the following supplemental findings, in addition to the findings in Section 126.0708 Subsections (a), (b), (c) and (d), and the supplemental findings in Section 126.0504 Subsection (b).

The decision-maker shall hold a public hearing on any application on a Coastal Development Permit that includes a deviation from the Environmentally Sensitive Lands Regulations in the Coastal Overlay Zone. Such hearing shall address the economically viable use determination. Prior to approving a Coastal Development Permit for development within the Coastal Overlay Zone that requires a Deviation from the Environmentally Sensitive Lands Regulations, the decision maker shall make all of the following findings:

- (1) Based on the economic information provided by the applicant as well as any other relevant evidence, each use provided for in the environmentally sensitivelands regulations would not provide any economically viable use of the applicant's property.
- (2) Application of the environmentally sensitivelands regulations would interfere with the applicant's reasonable investment-backed expectations.
- (3) The use proposed by the applicant is consistent with the applicable zoning.
- (4) The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of his or her property.
- (5) The project is the least environmentally damaging alternative and is consistent with all provisions of the LCP with the exception of the provision for which the deviation is requested.

The findings adopted by the decision-making authority shall identify the evidence supporting the findings.

## **APPLICATION INSTRUCTIONS FOR DEVIATIONS**

**22.** The City shall adopt “application instructions” for Deviations from Environmentally Sensitive Lands regulations. The “application instructions” shall be included in either Section 126.0708, or as part of separate application requirements which shall be approved as part of the City’s LCP Implementation Program. The “application instructions” shall consist of all of the following provisions:

### **Deviations from Environmentally Sensitive Lands Regulations within the Coastal Overlay Zone**

Where a deviation is requested from the Environmentally Sensitive Lands Regulations because the applicant contends that application of the regulations would result in denial of all economically viable use, the coastal development permit shall include a determination of economically viable use, subject to the following process:

#### **1. Application for economically viable use determination.**

Any applicant that requests a deviation from the Environmentally Sensitive Lands regulations, based on the contention that the uses permitted by the regulations will not provide an economically viable use of his or her property, shall apply for an economic viability determination in conjunction with the Coastal Development Permit application. The application for an economic viability determination shall include the entirety of all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application. Before any application for a coastal development permit and economic viability determination is accepted for processing, the applicant shall provide the following information:

(A) The date the applicant purchased or otherwise acquired the property and from whom.

(B) The purchase price and the documentary transfer tax paid by the applicant for the property.

(C) The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.

(D) The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.

(E) Any development restrictions or other restrictions on use, other than government regulatory restrictions described in (d) above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.

(F) Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.

(G) A discussion of whether the applicant has sold, leased, or donated a portion of or interest in, the property since the time of purchase indicating the relevant dates, sales

prices, rents, and nature of the portion or interests in the property that were sold or leased.

(H) Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.

(I) Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.

(J) The applicant's costs associated with the ownership of the property annualized to the extent feasible, for each of the years the applicant has owned the property, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.

(K) Apart from any rent received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over the years of ownership of the property. If there is any such income to report, it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.

(L) Topographic, vegetative, hydrologic and soils information prepared by a qualified professional, which identifies the extent of the wetlands on the property.

(M) An analysis of alternatives to the proposed project and an assessment of how the proposed project is the least environmentally damaging alternative. The analysis of alternatives shall include an assessment of how the proposed project will impact all adjacent wetlands and environmentally sensitive habitat areas including those within the overall development plan area.

The above "application instructions", are part of the City's LCP Implementation Program, and any modifications to these instructions require Coastal Commission approval.